The plaintiffs appealed.

E. D. Shearn (with him *H. R. Rix*) for the plaintiff-appellants.

The Court has found a breach of contract by the defendants in that they dispossessed the plaintiffs and so prevented them from winning tin from the defendants land.

The measure of damage laid down was the loss of profit the plaintiffs would have earned if they had not been dispossessed.

In order to ascertain the amount of this profit it is necessary to bore the defendants land.

The learned Judge in the Court below agreed that boring would be an advantage but he found that there was no precedent which allowed him to make an order.

The learned Judge overlooked section 497 of the Civil Procedure Code. He was wrong in thinking that the case before him was analogous to the application usually made by the defendants for a medical examination of an injured plaintiff because in the case of the examination of an injured plaintiff there is no question of "inspection of **property** which is the subject matter of such suit or as to which any question may arise therein".

He referred to:—

Order L r. 3 of the R.S.C. England; Order XLVII r. 4 of the S.S.; 8th Ed. Sarkar civil procedure, p. 2262; **Dhomey Dhur Ghose v. Radha Vobind Kur**(1); **Bennitt v. Whitehouse**(2); **Lumb v. Beaumont**(3); 5th Ed. Bainbridge on Mines, p. 446; **Cooper v. Ince Hall Co.**(4).

R. D. Hume (with him *J. M. M. Lewis*) for the defendant-respondents:

The results would not justify the inspection by boring—ordinary boring is for dredging propositions or open cast mines—here the appellants were "lampanning." They were merely scraping the surface.

There is power to make the order but it should not be made. The question of quota should be borne in mind. The defendants would not have been able to obtain all the tin in the land.

At the conclusion of the argument the Court of Appeal delivered an oral judgment accepting the submission of appellants' counsel that the application should have been granted under section 497 of the Civil Procedure Code (Cap. 7) and therefore allowing the appeal and making the order for which the plaintiffs had applied in their summons, each party to bear its own costs of the appeal.

Order accordingly.

MAHINDAR SINGH vs. P. P.

[App. Cr. Juris. (Terrell, Ag. C.J.) April 29, 1941]

Criminal Procedure Code (Cap. 6), section 174—Counsel for defence not given opportunity to address Court at the close of case—Irregularity—New trial ordered.

The appellant in this case was charged with voluntarily causing hurt to Gurbachan Singh by means of a Khanda, which used as a weapon of offence was likely to cause death, and thereby committing an offence punishable under section 324 of the Penal Code. He was convicted and sentenced to a fine of $75 or one month's rigorous imprisonment.

He appealed on the ground, **inter alia**, that the learned Magistrate did not give his counsel an opportunity to address the Court.

Held, this constituted an irregularity sufficient to justify an order for a new trial.

Appellant in person.

T. V. A. Brodie, Deputy Public Prosecutor, for respondent.

Terrell, Ag. C.J.—This was an appeal by the accused who was found guilty of an offence under section 324 of the Penal Code and sentenced to a fine of $75 or one month's rigorous imprisonment. The eighth ground of appeal alleges that the accused's counsel was never given an opportunity of addressing the Court at the close of the case. This is admitted by the learned Deputy Public Prosecutor and constitutes a serious irregularity. In view of this there is no necessity to enter into the merits of the conviction. The appeal will be allowed, the conviction set aside and a new trial ordered.

Appeal allowed. New trial ordered.

SELVARATNAM vs. P. P.

[App. Cr. Juris. (Terrell, Ag. C.J.) May 6, 1941]

Bankruptcy offence—Award of imprisonment—Rigorous or simple imprisonment.

In the absence of exceptional circumstances a sentence of simple and not rigorous imprisonment is the usual punishment for an offence under the Bankruptcy Enactment (Cap. 55).

In this case the appellant was charged with failing to disclose in his statement of affairs a debt of $1,712 thereby committing an offence under section 102 (f) of the Bankruptcy Enactment (Cap. 55). He was convicted and sentenced to undergo a term of three weeks rigorous imprisonment.

On appeal the sentence was varied by substituting simple imprisonment for rigorous imprisonment.

R. P. S. Rajasooria for appellant.

W. M. McCall, Deputy Public Prosecutor, for respondent.

Terrell, Ag. C.J.—The appellant was found guilty of an offence under the Bankruptcy Enactment, in failing to disclose all his liabilities in his statement of affairs. There is no question that the omission was deliberate and not through inadvertence. The appellant was therefore properly convicted. It is however unusual to award rigorous imprisonment, unless the circumstances are exceptional. The sentence is accordingly varied, and simple imprisonment substituted.

It appears that the appellant is a dresser in a Government hospital. I see no reason myself why he should not be just as well qualified for his work after his imprisonment for a bankruptcy offence as he was before. I appreciate, however, that this is a matter for the head of his department.

Conviction confirmed. Sentence varied.